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**SEP 09 2003**

**OFFICE OF PETITIONS**

In re Application of :  
Scholl et al. :  
Application No. 09/622,356 : **DECISION DISMISSING REQUEST**  
Filed: August 15, 2000 :  
Attorney Docket No. VWP-487-A :

This is a response to the statement filed August 18, 2003, requesting, in effect, that the accompanying amendment be considered filed on August 14, 2003.

Applicants state that "this Amendment is filed pursuant to the United States Patent and Trademark Office designating the emergency interruption in the service of the USPS beginning August 14, 2003 and is within the meaning of 35 U.S.C. § 21(a) and 37 C.F.R. 1.6(e)."

The USPTO designated the interruption in the service of the USPS that occurred as a result of the power outage on Thursday, August 14, 2003, in the Northeast and Midwest United States as a postal service interruption and an emergency within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). On August 15, 2003, a notice was posted on the USPTO website which indicated that correspondence that would have been filed with the USPTO under 37 CFR 1.10 during the USPS service interruption, but which was not filed due to the USPS service interruption, should be promptly filed after the termination of the interruption with a statement that the correspondence would have been deposited with the USPS but for the designated interruption or emergency in "Express Mail" service. Thereafter, on August 19, 2003, a second notice was posted on the USPTO website which indicated that the USPTO had terminated the designation of this interruption in the service of the USPS as postal service interruption and an emergency within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). This notice stated that correspondence that would have been filed with the USPTO under 37 CFR 1.10 on August 14, 2003, through August 16, 2003, but which was not filed due to the USPS service interruption, should now be filed with the USPTO under 37 CFR 1.10 with a statement that the correspondence would have been deposited with the USPS on August 14, 2003, August 15, 2003, or August 16, 2003, but for the designated interruption in the "Express Mail" service of the USPS. This notice also made it clear that the provisions of 35 U.S.C. 21(a) and 37 CFR 1.6(e) apply only to postal service interruptions and emergencies and not to other exigencies.

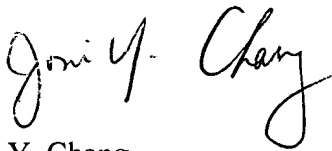
The amendment along with the statement and a one month extension of time was mailed by first class mail on August 18, 2003, and received in the Office on August 21, 2003. The correspondence includes a certificate of mailing stating that this correspondence is being deposited with the United States Postal Service as first class mail on August 18, 2003. There is no evidence that the correspondence would have been filed under 37 CFR 1.10 by Express Mail but for the designated interruption or emergency in "Express Mail" service. The power outage did not prevent correspondence from being deposited in first class mail on August 14, 2003, through August 16, 2003.

The request is dismissed.

After the mailing of this decision, the Office will charge \$300.00 (\$410.00 owed - \$110.00 paid) for the remainder due for a two month extension of time to counsel's Deposit Account No. 25-0115 as authorized in the petition for extension of time.

The application is being forwarded to Technology Center Art Unit 1744 for consideration of the amendment.

Telephone inquiries specific to this matter should be directed to Terry Dey at (703) 308-1201 or Joni Chang at (703) 308-3858.

A handwritten signature in black ink that reads "Joni Y. Chang". The signature is written in a cursive, flowing style.

Joni Y. Chang  
Legal Advisor  
Office of Patent Legal Administration  
Office of the Deputy Commissioner  
for Patent Examination Policy